WP(C) 2856/2002
BEFORE
HON'BLE MR. JUSTICE H.N. SARMA

This writ petition is filed praying for compensation on account of death of one Abdul Kadir due to electrocution at the village -Adabari in the district of Dhubri against the respondents/ASEB.

2) Heard Mr. MU Mandal, learned counsel for the petitioner and Mr. D.Bhattacharjee, learned Standing Counsel for the ASEB.

3) The pleaded case of the petitioner interalia is that on the fateful date i.e. on 20/10/01 at about 1-00 PM while the deceased Abdul Kadir was busy with his domestic work, suddenly a bamboo touched the electric wire nearby his house and the deceased Abdul Kadir due to electrocution died in the spot. The incident was reported by the VDP Secretary to the Officer-in-Charge, College outpost and accordingly a GD Entry No.397 was registered on 26/10/01. The deadbody was inquested by the Executive Magistrate and thereafter the postmortem examination was conducted in the civil hospital at Dhubri. The postmortem report dated 27/10/2001 disclose that the death of the victim was caused due to shock and electric burn.

4) On 15/3/2002, a representation was filed by the petitioner, the father of the deceased before the respondent No.1 with copies to other respondents praying for compensation on account of the death of his son due to electrocution. The deceased was a boy of 20 years of old and he was the only earning member for the family and accordingly the petitioner claimed for an amount of Rs.8,00,000/- as compensation. It is further pleaded that although under the Indian Electricity Rules, 1956 provisions have been made out for headlines and ground clearance in drawing electric wire but in the instant case the electric line was lying over the house/near the house of the petitioner and as a result of which the son of the petitioner was died due to electrocution. The further plea as has been taken by the petitioner that on the previous date the electric wire was snapped between two post/pillar and information to that effect was given to the respondent office and a line man from the board came and assured that the electric connection of the wire be defused but the same was not done and accordingly due to passing of the current, the victim got electrocuted through the live electricity wire. It is further alleged that the death of the victim was caused due to total negligence of the board and petitioner being father of the deceased is entitled to the compensation.

5) Refuting the allegations levelled by the petitioner, a counter affidavit has been filed by the respondent /ASEB. It is pleaded in the counter that on the date of occurrence when the son of the petitioner tried to elect one TV antenna with the help of bamboo tied with the antenna, the deceased could not control the load of the bamboo with antenna and as a result the bamboo fallen on the 11000 volt line wire and the victim got electrocuted. After the incident, the officer of the Board make necessary inquiry of the spot and recorded statements of the villagers whereby the villagers stated that the petitioner's son died while he tried to erect an antenna of television with a bamboo and when the bamboo touched the live wire then he got electrocuted and died. It is further case of the respondents that in the year 1983 one 11000 Kv. Line was constructed under the Rural Electrification Scheme strictly following the provision of Indian Electricity Rules and specification of the Rural Electrification Scheme. At that time, there was no residential house near or under the electricity line and the residential house of the petitioner was constructed much later than the construction of the 11 KV line by the Board. Along with the affidavit, the report submitted by the departmental officer has also been enclosed vide Annexure-1A.

6) The incident of electrocution was caused to be enquired by a senior elec

tric Inspector, Zone -II, Guwahati Head Quarter. The enquiry report submitted on 23/3/07 as per order of the Court. In the said report, it is pointed out that the incident occurred due to lack of knowledge of the victim Abdul Kader about the safety measure required to be adopted while working below or in the vicinity of liver bare overhead conductor lines and the provisions of Rule 82-A of the electricity rules was not complied with.

7) In case of death by electrocution, the compensation be paid only when such death is found to be caused due to negligence of the electricity Board. Such negligence deprives the cause of action for the compensation under the realm of public law and the Board is bound for providing compensation to the victim on account of default due to negligence of the Board. But in the instant case the report of the senior electric Inspector submitted with the statement of witnesses clearly discloses that the incident took place due to lack of knowledge of the victim about the safety measure required to be followed while working below or in the vicinity of live electric wire of conductor lines. While working under below or vicinity of live electric lines the safety measures required to be followed is provided under Rule 82-A of Indian Electricity Rules, 1956. There is no dispute about the applicability of Indian Electricity Rules, 1956 inasmuch as the occurrence took place prior to enactment of the Electricity Act, 2003.

8) Although Mr. Mandal tried to make out a case for negligence on the part of ASEB for not shifting the high voltage electricity line which passes over the house of the petitioner but from the counter affidavit it is found that while the electricity line was constructed at that time there was no house in the area and only after laying down of electricity lines, the petitioner constructed his residential house under the vicinity of the electric wire conductor lines. No document is also made available on record to support as regards the request of the petitioner for shifting of the said 11000 Kv. electricity line before the Board.

9) In the aforesaid facts and circumstances, I am constrained to hold that the death of the victim, Abdul Kadir was not caused due to negligence on the part of the ASEB entitling the Board to pay the necessary compensation as per the claim of the petitioner.

10) Accordingly, the petition is devoid of merit and stands dismissed. No costs.

11) However, it is observed that ASEB being a State within the meaning of Article 12 of the Constitution of India may consider the case of the petitioner for granting some ex-gratia payment although the case is not covered by any act of negligence on the part of the ASEB.